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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,239

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Ziya Arslankiray

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BSH HOME APPLIANCES CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
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EXAMINER

BRADEN, SHAWN M

ART UNIT

PAPER NUMBER

3781

NOTIFICATION DATE

DELIVERY MODE

04/06/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/581,239	<b>Applicant(s)</b> ARSLANKIRAY ET AL.
<b>Examiner</b> SHAWN M. BRADEN	<b>Art Unit</b> 3781

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 23 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.

/Anthony Stashick/  
Supervisory Patent Examiner, Art Unit 3781

Continuation of 13. Other: Response to Arguments

1. Applicant's arguments filed 03/23/2010 have been fully considered but they are not persuasive.
2. In response to the amendment to correct the 112 first and second paragraph of claims 32,35, the amendment appears to correct the problem, but the changes are possible new matter, and would require further consideration and further searching. Therefore they will not be entered.
3. In response to applicant's arguments on pages 9 and 10, where applicant argues "no apparent reason to combine". In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, a person of ordinary skill that wants to hold eggs would add the egg holding components of Cox and combine them with the carrier of Fierek.
4. Applicant also argues that the modifications of the examiner's 103 combination would not allow the Fierek reference to hold tools, nails, screws, bolts, in essence teaching away. The modifications do not exclude the Fierek reference from holding any of the mentioned components. Just because there are a few more apertures doesn't exclude a user from putting any tool, nails, screws etc. in the container from storage. In some ways it will hold small round or oval tools better.
5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the exclusion "the lower end of each of the eggs clearly would be exposed below the alleged support plate") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
6. In response to applicant's argument that claim 13 is for an egg for a refrigerator, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
7. In response to applicant's arguments, the recitation an egg tray for a refrigerator has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).
8. In response to applicant's arguments on page 11, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., cold air) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
9. In response to the argument on page 12 and again on page 14  
"Furthermore, in the Response to Arguments (pages 11-12, bridging paragraph), the Office Action acknowledges that the end section of the walls above the recesses in Figures 4 or 5 are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall section separated by recesses formed in the wall surrounding the support plate. Indeed, if the portion above the alleged recess is a wall section, then the wall sections are not actually separated from each other by the recesses, as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess to form a single wall section and there is no separation between wall sections"
10. Examiner is not really sure what point applicant is attempting to make. The callouts and lead lines of Fierek where not written specifically for this rejection. The walls and the spaces are clearly shown in Fierek. It appears applicant is attempting to argue that the walls are separate, not attached to the whole, components. But both the current application and the Fierek trays walls are connected to the tray as one unitary component.
11. In response to applicant's argument of claim 26, It appears to be some confusion here as well. Lets focus on the claim language in question,
12. "the first and second egg trays being stackable with one another by engagement of the wall sections of one of the egg trays into the recesses of the other egg tray"
13. Fierek fig. 9 clearly shows "engaging the wall sections into the recesses"
14. In response to applicants' next argument,  
Additionally, Applicants respectfully submit that none of the applied references discloses or suggests a handle projecting upwardly from the support plate of each egg tray above its center of gravity and a slit being formed in the support plate of each egg tray, the handle of one of the egg trays being receivable through the slit of the other egg tray to interconnect the egg trays, as recited in claim 26. Contrary to the assertions in the Response to Arguments of the Office Action, the Fierek et al. reference clearly does not disclose or suggest a slit formed in the egg tray that receives the handle of another egg tray. Instead, the Fierek et al. reference explicitly discloses a hollow interior 28 of the handle 26, not a slit. See, e.g., col. 5, lines 43-45
15. Fierek fig. 3, a bottom view of the tray shows element 28, which in the broadest reasonable interpretation reads on a "slit" where the handle of another tray may be placed.
16. In response to applicant's argument titled under claim 35,  
"The Fierek et al. reference clearly does not disclose or suggest that the plurality of wall sections extend downward from the support plate in a direction opposite from the handle. Instead, in the Fierek et al. reference, the wall sections 102 clearly extend upward from the alleged support plate 68, 70, 72, 74"

17. Examiner draws attention to fig. 2 to see elements support plates (68) then turn to fig. 8 shown wall (102) extending down towards the bottom of the container.
18. In response to the diametrically opposite argument, the chambers dictionary defines diametrical as 1. belonging or relating to a diameter. 2. along a diameter. 3. said of opinions, etc: directly opposed; very far apart. All three are easily met by Fierek since it is round.
19. In response to applicant next argument,  
"In the Response to Arguments (pages 11-12, bridging paragraph), the Office Action acknowledges that the end section of the walls above the recesses in Figures 4 or 5 are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall section separated by recesses formed in the wall surrounding the support plate. Indeed, if the portion above the alleged recess is a wall section, then the wall sections are not actually separated from each other by the recesses, as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess to form a single wall section and there is no separation between wall sections.  
thus, none of the applied references discloses or suggests all of the features of independent claim 35.  
Applicants respectfully request withdrawal of this rejection"
20. Applicant current application would not pass this narrow interpretation of the claim language, for further clarification examiner has stated the recess and walls in the above rejection.
21. In response to applicant next arguments titled under "claims 14-25,27-32 and 34" these arguments are reiterating the arguments answered above, please see the previous responses.
22. In response to applicant argument, titled under "The Rejection over the Fierek et al. reference, the Cox reference, and the Peeples reference"  
"Moreover, contrary to the assertions in the Office Action, the Peeples reference clearly fails to disclose wherein the handle is a plate, and wherein only one surface of the handle is directly adjacent to the slit, as recited in claim 33. Emphasis added"
23. Examiner draws attention to Cox's fig. 1 the top tray clearly has a handle on one side and a slit on the other side.
24. All other arguments have been answered above or in the final rejection. .